



STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES

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Testimony of the Office of Protection and Advocacy for Persons with Disabilities Before the Judiciary Committee

Presented by: James D. McGaughey
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Thank you for this opportunity to comment on two of the bills on your agenda today: **Raised Bill No. 918, AAC Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired**, and **Raised Bill 6314, AAC Sexual Assault of Persons Placed or Treated Under the Direction of the Commissioner of Developmental Service**. Both of these Bills would amend the sections of the criminal code that define and classify the crimes of second degree and fourth degree sexual assault. In general, those crimes are defined by the status of the victim or by a relationship wherein the perpetrator has responsibility for, or authority over the victim. The proposed changes would address practical problems that have arisen in pursuing prosecution of individuals who sexually assaulted people with disabilities. Our Office supports both these measures

Raised Bill No. 918 would delete obsolete references in current statute to victims who are "mentally defective" or "physically helpless" – terms which both offend and, at the same time have proven inadequate to protect people with disabilities. Instead, the bill would provide that a perpetrator would be guilty of either second or fourth degree sexual assault if the ability of the victim to communicate lack of consent to sexual intercourse or sexual contact is "substantially impaired because of a mental or physical condition and the actor knows or has reasonable cause to believe that the ability of such other person to communicate lack of consent" to sexual intercourse or contact is so impaired.

Recognition that this legislation is needed crystallized following an Appellate Court decision last year that overturned the conviction of a man who had been found guilty of Second Degree Sexual Assault of his girlfriend's daughter. In addition to having mild intellectual disability, that young woman has very substantial physical disabilities which render communication, or any movement, quite difficult for her. Our Office was called to investigate this matter, and our staff investigator testified at the trial. We also ensured that police authorities were involved as it was apparent that a crime had been committed. The woman testified at the trial using a message board with assistance in the form of an elaborate system of closed circuit TV cameras and monitors so that jurors could directly view her responses to questions – response which were slow, but clear. Although she could testify for only 15 minutes at a time before becoming too fatigued to continue, and her testimony had to be spread over five days, she never wavered in her description of what had happened to her or her determination to testify about it. The jury convicted her assailant of Second Degree Sexual Assault.

The Appellate Court's decision overturning the jury's verdict has occasioned considerable concern within the disability community in Connecticut, and is being appealed to the Supreme Court. (Our Office has filed an Amicus brief in support of the State's appeal.) However, because the Appellate Court interpreted the current statutory terms to mean that the victim must be "totally incapable" of communicating, and because the language in current statute is so arcane, the need to clarify this section of the Code has become apparent.

People with disabilities have a lot at stake here. Recent data from the Bureau of Justice Statistics shows that if you have a disability you are twice as likely to be sexually assaulted as someone who does not have a disability. At the same time, we want to be careful not to create any statutory presumptions to the effect that people with significant disabilities are categorically incapable of engaging in truly consensual sexual relations. The bill before you creates no such presumption, and will go a long way toward ensuring just results for victims with disabilities. Its language has been vetted by the various groups and agencies that have an interest. I urge you to act favorably on it.

Thank you for this opportunity to comment on **Raised Bill No 6314, An Act Concerning the Sexual Assault of Persons Placed or Treated under the Direction of the Commissioner of Developmental Services**. Like RB No. 918, this bill would also amend the statutes that define the crimes of sexual assault in the second and fourth degrees. It would specifically include situations where the victim is placed or treated under the direction of DDS, and the perpetrator has supervisory or disciplinary authority over that person. Existing language addresses situations where victims are "in custody of law or detained in a hospital or other institution". However, the clear trend in human services over the past thirty years has been away from reliance on institutions and other facilities. Those with "supervisory or disciplinary authority" over DDS clients now include a variety of support workers, including drivers, job coaches, drop-in support staff and Community Companion Home (e.g. foster care) providers. Our Office has investigated situations where people who were paid to take care of DDS clients – caregivers who knew of their clients' personal histories, vulnerabilities and clinical needs, and who held power over them – had sexual relations with those clients. Those individuals could not be prosecuted, however, because there was no specific provision of the Criminal Code that proscribed their behavior. While the number these events remain relatively low, updating the statutory language will allow prosecution of those individuals who do offend in the same way that current law allows prosecution of institutional staff.

Thank you for your attention. If there are any questions, I will try to answer them.